

Right-of-Way Procedures for Local Public Agency Projects

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[Editor's Note—This paper is addressed to Local Public Agency officials and other county officials.]

It is the intention of the Local Assistance Division, Indiana Department of Highways (IDOH) to provide guidance to those people concerned with acquiring right-of-way for the Local Public Agency (LPA) when federal funds are used in any part of a project.

There are specific laws and regulations of the IDOH and the Federal Highway Administration (FHWA) that must be followed. The FHWA requires written certification from the IDOH that the acquiring agency has complied with the applicable laws, policies, and procedures. Likewise, the IDOH requires the same written certification along with the proper documentation from the LPA. It is our job to monitor such projects to insure that the property owners have been treated fairly as stated in Public Laws 91-646 and 93-643. We are here to help you achieve that. Non-compliance with the laws and policies could result in loss of federal funds for your project.

Presently there are two types of right-of-way projects—participating and nonparticipating. Participating projects are those in which there is federal funding in the right-of-way and non-participating are those in which there is federal funding in construction costs only. Currently FHWA and the IDOH require additional information for participating projects. However, we received word just last week that President Reagan signed the executive order to implement the Uniform Property Act of 1970 into a single standard which means the requirements will be the same for both types. At this point we do not know just when the single standard will go into effect. I am going to talk about non-participating projects and Carol Erler will talk about the agreements required for participating projects.

There should be no acquisition of right-of-way prior to notification of design approval except for parcels approved for advance acquisition by the IDOH. After we have received a copy of the design approval, we send a right-of-way packet to the LPA. The packet contains instructions, samples of forms, and a checklist along with our business cards. If ever you have any questions, please contact either Carol Erler or myself for assistance before you proceed.

After design approval, the acquiring agency should select a qualified appraiser to appraise the properties affected by the project. The appraiser must submit a written appraisal which complies with Public Law 91-646, FHWA and the IDOH requirements for each parcel to establish fair market value. The Value Finding form contained in the packet meets these requirements, however, the appraiser may use his own form as long as it includes the Certificate of Appraiser which is on the Value Finding form. The property owner should never see the appraisal.

The property owner must be given the opportunity to accompany the appraiser when the inspection is made. The property owner also must receive the pamphlet, "How Land is Purchased for Highways," which informs the property owner of his rights pertaining to right-of-way. This pamphlet is included in each of our packets or it can be purchased from us at 35¢ each. It may also be reproduced locally at your expense. Upon completion of the appraisal, the head of the acquiring agency must sign the appraisal showing his review and approval.

After the appraisal process is complete, buying can begin. The appraiser and buyer cannot be the same person. Likewise, the attorney handling condemnation cannot be the buyer.

Before initiation of negotiation to purchase the right-of-way, the buyer must present the property owner a Uniform Land or Easement Acquisition Offer. In lieu of the appraisal, the buyer must also give the property owner a Statement of Just Compensation signed by either the review appraiser or head of the agency. The Statement of Just Compensation summarizes the basis of fair market value. Under no circumstances can the Offer Letter or Statement of Just Compensation be for less than the fair market value.

The property owner has 25 days from the date of the Offer Letter to accept or reject the offer. If the offer is accepted, the property owner should receive full payment within 90 days after signing the documents and executing the instruments of conveyance. The LPA gains possession 30 days after the property owner has received payment.

The right-of-way grants or deeds prepared by an attorney must be recorded if the taking is permanent. Temporary right-of-way need not be recorded, but should be retained by the Local Agency.

If a property owner and the buyer cannot agree on the purchase price, the LPA can exercise its power of eminent domain and institute formal condemnation proceedings. The court will appoint three appraisers who will make an independent appraisal of the property to be acquired. The LPA will deposit with the court the amount stated in the appraiser's report. If either the LPA or the property owner does not accept the court appointed appraiser's report amount, either one has the right to request a trial by jury to decide the amount that should be paid.

An appraisal is not required if a property owner chooses to donate

or accept minimum payment for the right-of-way. However, the property owner must first be informed of his rights to an appraisal and receipt of just compensation. The property owner must then sign a form waiving those rights, not to be confused with the instrument of conveyance.

Minimum payment procedures provide for a payment to the property owner of up to \$500 for acquisitions of land only. A formal appraisal is not required, but the acquiring agency must analyze the market and establish the typical unit value of the land to be acquired and base the payment to the property owner accordingly.

Copies of right-of-way documents along with the proper certification must be received by the Local Assistance unit approximately 12 to 14 weeks prior to the scheduled construction contract letting. Letting dates will be delayed if right-of-way has not been acquired and received by us by the scheduled time. If you have any questions concerning the date certification is required for a specific project, please contact us.

This checklist from our packet lists copies of documents we need. We do not need or want the originals because our files are eventually purged. The only original document we require is the certification letter. The documents are thoroughly checked by us and someone from FHWA comes to our office and also checks them. If we don't have what is required, the construction contract letting could be delayed.

It is not unusual for someone from FHWA to personally contact property owners. Carol and I have also personally called upon property owners. On occasion this has proven to be very enlightening.

In checking through a project, there are some problems that seem to occur more often than others. The most prevalent is that the property owners have not been given the pamphlet, "How Land is Purchased for Highways." FHWA is adamant that this be done. As far as our requirement showing that these have been distributed, all you need to do is send us a statement saying that each property owner received the pamphlet, "How Land is Purchased for Highways."

You do not need to send a copy of the check or claim if the amount paid is shown on the grant or deed. This will save you time and paperwork.

Another problem that I have recently seen is incoming projects where the parcels are not numbered. This is not a requirement for non-participating, but it is for participating projects. However, it sure makes it easier and less time consuming for us.